IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5076 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE CIVIL SUPPLIES CORP. LTD

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

MR KM PATEL for Petitioner

MR PARESH J MEHTA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 26/04/2001

ORAL JUDGEMENT

1. The Gujarat State Civil Supplies Corporation Limited, petitioner has filed this petition under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 25th March, 1986 passed by the Regional Provident Fund Commissioner, respondent under Section 7A of the Employees Provident

Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) holding that the amount of Rs.19,125/- as amount due and payable under the Act and has issued notice dated 18th April, 1986 by the respondent for recovery of the said amount.

2. The petitioner is a wholly owned Government Company incorporated in the Year-1980. The petitioner has prayed that this Court may be pleased to quash and set aside the judgment and order dated 25th March, 1986. The petition was filed on 28th August, 1986.

3. When the matter was placed for hearing before this Court on 23rd March, 1989, this Court issued notice. On behalf of the respondent - Regional Provident Fund Commissioner, one Mr.M. A. Sutaria has filed affidavit on 21st April, 1989. It has been stated that after having inspection, the respondent - authority has determined the dues and, thereafter, initiated proceedings under Section 7A of the Act. Rule in the interest of justice has also complied with and, thereafter, the order dated 25th March, 1986 was passed. The respondent has denied the various contentions raised by the petitioner. The respondent has also filed rejoinder on 9th April, 2001.

4. Mr.K. M. Patel, learned advocate for the petitioner has invited my attention to the judgment of the Hon'ble Apex Court in the case of Food Corporation of India v/s. Provident Fund Commissioner and others, reported in (1990) 1 Supreme Court Cases 68. After considering the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 particularly Section 7-A of the Act. The Hon'ble Apex Court has also observed in para-9 as under :-

> "It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings

requests for summoning evidence from a particular person."

5. It was further submitted that the petitioner had produced before the respondent the statement of amount paid towards handling charges to different contractors in Surendranagar District. A copy of the said statement is annexed at Annexure - F to the petition. It was further submitted that besides the said statement affidavits of all the 8 contractors at the relevant time were produced before the respondent deposing that the work was available in the godown on 2/3 days in a week and that they used to engage labourer on daily wages as and when the work was available. It was further submitted that none of the labourer who had worked with them had completed 60 days work in a period of 90 days. It was further submitted that having regard to the quantum of work available at various godowns, it was quite improbable and impossible that any of the person who had worked with the contractors might have completed 60 days work so as to make him eligible to become the member of the Scheme as provided in para 26 of the Employees Provident Funds Scheme, 1952. It was further submitted that when the work is available only for two days in a week then it becomes necessary to examine the said fact whether the employees were eligible to become member of P.F.Scheme and any amount is due in respect of such eligible employees.

6. In view of the same, the judgment and order dated 25th March, 1986 passed by Regional Provident Fund Commissioner, respondent to be quashed and set aside and the matter is remanded.

7. In view of the same, the petitioner Corporation will comply with the condition and the Commissioner of the Regional Provident Fund shall adjudicate the dues of the provident fund in this behalf. This application is disposed of accordinly.Rule is made absolute.

(K. M. Mehta, J.)

(vrpanchal)*